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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/626,629	07/25/2003	Steven J. Jackowski	006267.00002	9627

22907 7590 10/26/2006

BANNER & WITCOFF  
1001 G STREET N W  
SUITE 1100  
WASHINGTON, DC 20001

EXAMINER
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HAMILTON, LALITA M

ART UNIT	PAPER NUMBER
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3691

DATE MAILED: 10/26/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/626,629

Applicant(s)

JACKOWSKI ET AL.

Examiner

Lalita M. Hamilton

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 07 September 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 3-11, 13-21 and 23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 3-11, 13-21 and 23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☒ Other: Advisory action.

## DETAILED ACTION

### Summary

On August 14, 2006, a final office action was sent to the Applicant rejecting claims 3-11, 13-21, and 23. On September 7, 2006, the Applicant filed a request for reconsideration. Prosecution has been reopened. A non-final action follows.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

Claims 3-11, 13-21, and 23 are rejected under 35 U.S.C. 102(a) as being anticipated by Kiel (2003/0027549).

Kiel discloses a method and corresponding apparatus for a prepaid communication system comprising regulating data consumption in a wireless network, storing an account for each of a plurality of subscribers of the wireless network, each account having an upstream and a downstream balance that tracks a wireless network data consumption of the respective subscriber of the wireless network, imposing a bandwidth limitation on a subscriber of the wireless network responsive to either the upstream or downstream balance of the account of that subscriber of the wireless network dropping below a defined level, and for each account, crediting the balance of the respective account on an

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intermittent basis (p.1, 8-9; p.2, 21-22; and p.3, 26 and 35—the Examiner is interpreting data transmission “to” as being upstream and data transmission “from” as being downstream); imposing the bandwidth limitation includes causing an existing bandwidth limitation to be more restrictive (p.1, 8-9; p.2, 21-22; and p.3, 26 and 35); crediting is performed on a periodic basis (p.1, 8-9; p.2, 21-22; and p.3, 26 and 35); crediting includes crediting the balance of each account by an amount that depends upon the balance of the respective account (p.1, 8-9; p.2, 21-22; and p.3, 26 and 35); reducing a bandwidth limitation on one of the subscribers responsive to the balance of the account of that subscriber rising above a predetermined level (p.1, 8-9; p.2, 21-22; and p.3, 26 and 35); reducing includes releasing the bandwidth limitation (p.1, 8-9; p.2, 21-22; and p.3, 26 and 35); for each of the subscribers, reducing the balance of the account of the respective subscriber by an amount based upon a volume of network data consumption by that subscriber (p.1, 8-9; p.2, 21-22; and p.3, 26 and 35); sending information to each of the subscribers indicating the balance of the account of each respective subscriber (p.1, 8-9; p.2, 21-22; and p.3, 26 and 35); the upstream and downstream balance for each account is presented to the user (p.1, 8-9; p.2, 21-22; and p.3, 26 and 35); the balance for each account is a burst balance (p.1, 8-9; p.2, 21-22; and p.3, 26 and 35); imposing the bandwidth limitation includes imposing the bandwidth limitation on the subscriber responsive to the balance of the account of that subscriber dropping below a defined level and at further depending upon least one of a time of day and a current network congestion level (p.1, 8-9; p.2, 21-22; and p.3, 26 and 35); regulating a bandwidth available to a network subscriber

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based on whether a predetermined volume of data has previously been consumed by the subscriber (p.1, 8-9; p.2, 21-22; and p.3, 26 and 35); the bandwidth is regulated based on whether the predetermined volume of data has been consumed by the subscriber over a defined window of time (p.1, 8-9; p.2, 21-22; and p.3, 26 and 35); sending information to the subscriber indicating whether the bandwidth is being regulated (p.1, 8-9; p.2, 21-22; and p.3, 26 and 35); the wireless network is configured to regulate a bandwidth available to one of the subscribers based on whether a predetermined volume of data has previously been consumed by that subscriber (p.1, 8-9; p.2, 21-22; and p.3, 26 and 35); the apparatus includes a computer coupled to a database, the database storing an account balance for each of the plurality of subscribers, the account balance depending upon a volume of data previously consumed by a respective subscriber (p.1, 8-9; p.2, 21-22; and p.3, 26 and 35); and computer is configured to regulate the bandwidth available to one of the subscriber responsive to the account balance of that subscriber dropping below a defined level (p.1, 8-9; p.2, 21-22; and p.3, 26 and 35).

### ***Response to Arguments***

Applicant's arguments with respect to claims 3-1,1, 13-21, and 23 have been considered but are moot in view of the new ground(s) of rejection.


### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lalita M. Hamilton whose telephone number is (571) 272-6743. The examiner can normally be reached on Tuesday-Thursday (6:30-2:30).

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kalinowski Alexander can be reached on (571) 272-6771. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Lalita M. Hamilton  
Primary Examiner, 3691

**Advisory Action  
Before the Filing of an Appeal Brief**

Application No.

10/626,629

Applicant(s)

JACKOWSKI ET AL.

Examiner

Lalita M. Hamilton

Art Unit

3691

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 07 September 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: \_\_\_\_\_.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: \_\_\_\_\_  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_  
13. ☒ Other: See Continuation Sheet.

*Lalita M. Hamilton*  
LALITA M. HAMILTON  
PRIMING EXAMINER, 3691

Continuation of 13. Other: The arguments have overcome the prior art of record. The Examiner is reopening prosecution. A non-final action is attached to this advisory action.

A handwritten signature in black ink, consisting of a stylized 'M' or 'W' shape with a long horizontal line extending to the right.